

# Egypt in Transition

## The Third Republic

BY M. CHERIF BASSIOUNI

On January 25, 2011, the Egyptian people took to the streets and in 18 days were able to bring down the 30-year corrupt dictatorial regime of Hosni Mubarak, using entirely peaceful means. That revolution set the Arab Republic of Egypt on a hopeful path to democracy. After Mubarak resigned, the Supreme Council of the Armed Forces (SCAF) became the custodian of the transition. In June of 2012, in Egypt's first free and fair presidential election, Muslim Brotherhood candidate Mohammed Morsi was elected President. Slightly more than 50 percent of registered voters actually voted, and those voters gave Morsi a majority of just less than 52 percent. Having won by this slim margin, Morsi was sworn in as President on June 30, 2012, and thus the Second Republic came to be.<sup>1</sup> He was removed by the military on July 3, 2013 and a temporary President, Adly Mansour, was appointed on July 4, 2013. Thus began the Third Republic.

### The Second Republic

Five months later, Morsi declared his decisions beyond judicial review, and thus his authority unchallengeable. In December, 2012, he pushed a pro-Islamist constitution through a popular referendum; it passed but with less than 30 percent of the popular vote. There was no constitutional way to recall, impeach, or remove Morsi. The path to democracy was taking a turn towards theocratic autocracy. The serving People's Assembly (Majliss al-Sha'ab) had been elected under a law later declared unconstitutional. Over 60 percent of the members of the new parliament were Muslim Brotherhood (MB) and Salafists. To many both in and outside of Egypt who view the values of secular democracy and Islam as overlapping, such values were at risk of being compromised by an Egyptian theocracy ruled by the MB. The MB's democratic rise to power, however, had to be respected. Regrettably, the Second Republic was short-lived.

Insofar as there was no way for popular democracy to change the theocratic course of events, on June 30, 2013, the Egyptian people reacted in the only way possible, with their feet in the

*M. Cherif Bassiouni is Emeritus Distinguished Research Professor of Law at DePaul University and the President Emeritus of the International Human Rights Law Institute.*

streets. In response to the general deterioration of the political and economic situations, youth groups launched the *Tamarud* (Rebel) movement, gathering 22 million signatures, whose accuracy was highly questioned, petitioning for Morsi's resignation. They along with other opposition groups planned protests demanding the president's resignation, a revocation of the 2012 Constitution, and a temporary return to the 1971 Constitution until a new constitution could be drafted, and new parliamentary and presidential elections held. Thirteen million people took to the streets calling for Morsi's ouster. Had a constitution been in place, an impeachment process would have been possible. The controversial new 2012 Constitution provided for such a process in its Article 156, but this could only be pursued before the People's Assembly, which had not yet been elected. Consequently, there was no

constitutional process in place through which impeachment could have been pursued.

Between July 2 and 3, 2013, the army intervened in support of the popular demand that Morsi be deposed and took Morsi into custody, selecting a new temporary president who was immediately sworn in. The majority of the Egyptian people supported what the military did. U.S. Secretary of State John Kerry responded on August 2, 2013, from Islamabad, Pakistan, stating that the military had restored Egypt to the path of democracy. Relying on formal legality, the MB disagreed vehemently, holding that this was a military coup without legitimacy.<sup>2</sup> The MB initiated a wave of civil resistance, but also engaged in violence and disruption of public order. A number of violent incidents occurred; no one knows exactly how many persons were killed and injured. The estimates are 3,000 - 4,000 killed, 20,000



Gigi Ibrahim

Tahrir Square. November 27, 2012

- 22,000 injured, and 16,000 - 22,000 arrested. Both sides accuse each other of initiating the violence, and there is no doubt that an impartial and fair investigation is needed.<sup>3</sup> Instead, the National Council on Human Rights issued a report on March 16 blaming all sides without much more. Then, another committee was appointed to report on violations only since July 2013. Its credibility is highly in doubt. Excessive force appears to have been used by the security forces and the military. The human consequences were appalling.

These protests and demonstrations have had a crippling effect on the life of Egyptians, and prevented the country from moving forward. While such events led to some sympathy for the MB and attracted support outside of Egypt, they galvanized more Egyptians to support the military and security forces, adding to the country's already significant level of polarization and radicalization. Supporters of the MB increased their fervor for martyrdom as more of their protestors confronted security forces, even establishing a brigade whose members donned t-shirts reading "martyr" in Arabic. They prepared for a major showdown. This was in effect a big battle for martyrdom. The MB has always hoped to attract sympathy and support, both abroad and at home, and indeed acted with this goal in mind. The former is very likely, while the effect on the latter is likely to be the opposite.

The month of August, 2013, was hot in every sense of the word, as violence escalated in Egypt. At dawn on August 14, Egyptian security forces (police and army) acted to remove the MB and their supporters from public locations they had occupied since July 2 following the ouster of then-President Morsi. Two primary locations were in Cairo, one at the intersection and public square known as al-Rab<sup>c</sup>a

Adawiyya, the other at al-Nahda Square. The protestors were in other locations in Cairo as well as other parts of Egypt, and engaged in periodic public demonstrations. The two Cairo locations were converted into inhabited makeshift towns with field hospital tents and pharmacies, as well as cooking, housing, and food storage tents. Both of these camps had concrete and stone barriers made of stone blocks removed from the streets. They became fortified areas. Traffic was impeded and the inhabitants of these areas were prevented from accessing their homes and from circulating freely in and out of their neighborhoods. These two locations and other smaller ones became small fortifications ready to face any efforts by the security forces to remove those on the inside. Both sides were locked in their respective positions. The security forces warned that they would act to remove those who had occupied the streets and public areas because they were impeding traffic and infringing upon the rights of the inhabitants of these areas, in addition to disrupting the economy and order of the nation.

These and other demonstrations, protests, and marches by the MB were held in the name of democracy, calling for the return of ousted President Morsi and the restoration of the 2012 Constitution. There are valid claims on both sides. The MB have a valid claim based on the legality of the processes that brought about the election of Morsi and the adoption of the 2012 Constitution by public referendum. The opposition has a claim based on legitimacy that transcends legality, namely that Morsi had appropriated all powers without regard to judicial overview of his executive decisions; that he had mismanaged the affairs of state; that there was no constitutional or other legal mechanism for his recall, removal,

or impeachment; and that the 2012 Constitution had been rammed through a popular referendum after having been produced by a committee appointed by a legislature established unconstitutionally and whose elected officials had been dismissed.

A negotiated political solution was urged internally and externally. Internally, then-Temporary Vice President Mohammad al-Baradei (who resigned on August 14, 2013) called on the nephew of the late President Anwar Sadat to convene a meeting of all political factions to discuss a solution to the crisis. The MB refused and the effort was not pursued. The Ministry of Transitional Justice, which had been established by decree of Temporary President Adly Mansour and whose cabinet position was occupied by a distinguished,

retired administrative Judge, Amin el-Mahdi, was basically “dead on arrival.” No initiative was taken by the new Minister.

All of this did not help Egypt progress nor address the country’s dire economic and social problems. The military maintain that they do not wish to retain political power and that General Abdel Fattah al-Sisi does not seek to be a dictator. They say that they wish to see Egypt on a path of stability, moving towards democracy in a way that fits Egyptian culture and needs. But let there be no doubt about it: since July 2, 2013, there has been a crackdown on the MB. Somewhere between 17,000 and 20,000 MB supporters have been detained. In addition to Morsi, most of the Brotherhood’s senior leaders have been imprisoned and their media outlets have been shut down. The



Mohamed Elsayed Ibrahim

Pro-Morsi protesters in Damietta on July 5, 2013

former President and the leadership have been charged with a number of crimes including espionage. Their trials began January 2014, and there is a definite feeling that things are returning to the repressive days of Gamal Abdel Nasser.

### The Third Republic

For all practical purposes, Egypt's Third Republic began on July 4, 2013. The birth of the Third Republic coincided with the anniversary of the American Declaration of Independence. Let us hope that this historical coincidence augurs well for Egypt's future after the elections of May 2014, which are certain to see el-Sisi as President. In the meantime, tragic events immediately unfolded, resulting in an estimated 1,000 deaths and 4,000 injuries over the span of just 72 hours. Exact numbers are difficult to ascertain. The Egyptian people have been traumatized by this unprecedented experience of violence. As stated above, the National Council for Human Rights investigated the incident and came out with an ambiguous report blaming all parties. Subsequently, the temporary President appointed a national commission which has already indicated its bias by issuing an interim report stating that there is no torture in Egyptian prisons. Its final report is likely to be seriously disputed. No efforts were made by the UN to establish an international commission.

Freedom and democracy are also among the casualties. Whether the country will turn into what some have described as a police state, is at this point speculative. Both sides, the regime and the MB and its Islamist supporters, are acting on the basis of two totally opposing realities that inform their policies and actions. Egyptian society is strongly

polarized and partially radicalized—each side feeding upon their respective perceptions, using examples of violent and repressive actions as evidence to support their suspicions. There is almost no political center remaining in Egypt, at least none able to mediate between the two extremes. And there are no emerging moral leaders who have credibility with both sides.

The country is on the verge of an economic abyss, and the present instability only adds to the risks it is facing. The accumulation of social and political problems will render stability more difficult to achieve. The regional implications are yet to be felt, as are larger geopolitical consequences. Admittedly the U.S. is in a difficult position. Notwithstanding its best intentions, the Obama administration manages to continue to be viewed by all parties concerned as ambiguous and untrustworthy. Maybe it is this perception more than anything else that impacts the Arab and Muslim worlds. It is only the enormous reservoir of goodwill that Arabs have for Americans that keeps Arab and Muslim countries from giving up entirely on the U.S. as a reliable, friendly state.

### Attacks on Christians

There has been a sharp rise in attacks on Christians and Christian-owned property in Egypt since the events of August 14, 2013. In apparent response to the dispersals on August 14, supporters of the MB across Egypt, particularly in Upper Egypt, engaged in acts of violence against churches and other Christian-owned property. At least 42 churches nation-wide were burned or ransacked, and other Christian-owned businesses or property were attacked.<sup>5</sup> Egyptian authorities, particularly police forces, have consistently failed to prevent these sectarian attacks and were not

present at their sites even after they were made aware that they were taking place. According to Human Rights Watch, sectarian violence in recent months has occurred in eight governorates, and three Coptic Christians and one Muslim were killed as a result of attacks in Dalga, Minya and Cairo. Egyptian authorities lost control of the town of Dalga in southern Minya to Islamists between July 3 (the day Morsi was ousted) and mid-September, during which time the town saw the worst sectarian violence in Egypt in recent memory.<sup>6</sup> The town has a population of about 120,000 of which 20,000 are Christians, and was overtaken by radical Islamists who twice fought attempts by

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the army to regain control of the area. A 1650-year-old monastery and the two churches in the town were burned or looted, about 1000 Christians have fled, and those who remain in the town generally have been staying indoors for fear of harassment.<sup>7</sup> Other residents of Minya have relayed to researchers that someone had been drawing black Xs on Christian-owned storefronts to distinguish them from Muslim-owned businesses so they could be easily identified and attacked.<sup>8</sup> Following police practices of the Mubarak days, "reconciliation sessions" in the presence of local officials, were held in August to pressure Coptic Christians to withdraw complaints they had submitted against police stations in return for their safety.<sup>9</sup> Some in Dalga said that some

town residents even asked for money in exchange for protecting local Christians, in reference to a tax that was imposed on Christians centuries ago.<sup>10</sup> These developments are in effect a breakdown of the rule of law, and a clear failure by the state to fulfill one of its most basic obligations, the protection of citizens from violence. When security forces brought heavy weapons to reclaim control of the town, it was not to protect Christians, but was rather to catch a fugitive Islamist, according to the Interior Ministry.<sup>11</sup>

The governorates of Minya and Asyut are both Islamist strongholds; yet, they both have relatively large Christian populations. This rise in Islamist violent, sectarian activity against Christians, in addition to a growing militant movement in the Sinai Peninsula, shows the inability or unwillingness of the security forces to protect Christians. This violence significantly helps the current military-backed government to make the case for a crackdown on supporters of the MB, which may in fact give further momentum to militant activity in Upper Egypt and Sinai.

The attacks followed weeks of sectarian discourse by public speakers at the two major sit-ins dispersed in August 2013, as well as local groups and religious leaders in different Egyptian governorates, suggesting that Christians were somehow at least partly responsible for Morsi's removal from power, and inciting attacks against them.<sup>12</sup>

Whatever the posture of the present regime may be, politically, with respect to the protection of non-Muslims, particularly the Copts, it is no different than the Mubarak regime.

## Strikes Against Democracy

In the late hours on July 8 2013, Temporary President Mansour announced a new interim Constitutional Declaration and a political timetable. In so doing, he assumed legislative powers. This new document outlines the timeline to re-establish a democratic system of government while positing certain basic principles about the nature of the state. In short, the Third Republic intends these principles to be drafted in a manner that will appeal to all concerned political sectors of society.

The military, which made this transformation possible, preserved its autonomy in Article 19, which grants military courts complete independence in their affairs. Article 21 confirms that the armed forces are the sole protector of the nation. Article 22 limits discussion of the armed forces' budget to a "National Defence Committee" likely to be dominated by the military. But perhaps the most important provision is Article 23, which does not define the President as head of the armed forces—a claim that ousted President Morsi repeatedly made to confirm the executive's power over the military. The military has not only confirmed its autonomy in every respect, it has also placed itself outside any constitutional limit, which is a blow to democracy with serious consequences for the rule of law, particularly when it comes to the military courts exercising jurisdiction over civilians. In short, the military is no longer under civilian control; instead, it is the controller of civilian power. So much for democracy in the making.

The new Constitutional Declaration gives the Salafists confirmation of the Islamic nature of the state. Article 1 states specifically that "[t]he principles of Islamic Law and that includes its sources, norms, and principles that are to

be found in the recognized schools of law of the Sunna, are the primary source of legislation." This is an expansion from the 1971 Constitution (amended in 1980) that stated, "The principles of Islamic law are the primary source of legislation." This new Article 1 adds that the Supreme Constitutional Court can only recognize Sunni jurisprudence, rejecting any other Muslim jurisprudential school. This was designed to assuage the Salafists. Article 7 states that freedom of religion is for the three Abrahamic religions, ignoring the country's other minority populations. Therefore the Baha'i, Hindu, and Buddhist in Egypt will not be able to exercise their religious beliefs in public places or as groups. This Article violates the International Covenant on Civil and Political Rights (hereinafter the ICCPR), to which Egypt is a party.

The Constitutional Declaration also attempts to modestly address the concerns of liberals by expanding general freedoms. Article 4 declares all citizens equal under the law regardless of "origin, type, language, religion, or creed." Article 6 states that no citizen may be "arrested, searched, detained, or restricted in movement or freedom" except in cases of *flagrante delicto* or with an order from a judge or the state prosecutor. Article 8 protects the freedom of the press, deleting the 2012 Constitution's feared "Parliamentary Press Committee" that would have been given the right to monitor the press and regulate which organizations could and could not publish. Article 10 grants full rights for peaceful meetings and demonstrations of all types. Private meetings are also now allowed, and no member of the security forces has the right to attend or listen in on the proceedings of private meetings. But all of these rights and freedoms are "subject to law," which means that current and

future legislation regulating these freedoms and rights can restrict them. And that too is a violation of international human rights law and the ICCPR. In the meantime, a new anti-protest law was passed in 2014 which significantly restricts these rights

Although this Constitutional Declaration was relatively well drafted, it is ambiguous in places and leaves many questions unanswered. Most significantly, it suspends and yet at the same time relies on the 2012 Constitution, while simultaneously relying on the 1971 Constitution—which the 2012 Constitution supersedes. This is symptomatic of the continuing confusion in the use of constitutional instruments as a way of achieving the political goals of those in power. This was obvious in 2011, during the period in which the SCAF had

*Egypt's economic credit has all but disappeared, and all financial transactions, including government ones, have to be made on a cash basis.*

taken over all powers. The current Declaration seeks to give something to everybody, yet leaves all sides in doubt. The Islamists are still apprehensive that the freedoms granted in the Declaration could open the door to what they perceive to be “blasphemy” or “attacks on Islam.” The liberals question contradictions in rights and freedoms, and wonder how future laws will restrict them. Both camps have reason to be wary of the continued preferred position of the military that will operate as a state within a state.

The Constitutional Declaration also sets forth what may prove to be an unrealistic

timetable for the country's normalization. The timetable is ambitious but it is also non-binding. Even if it were binding, those who could enforce it are those who created it. This timetable was intended to show that democracy is in the making, that what happened was not a military coup, and more importantly, that the military is not interested in seizing power. A Committee of 50 was appointed by the temporary President which was not representative of all factions of society, specifically excluding nine million Egyptian expatriates with a right to vote. It produced a constitution very much in keeping with the military establishment's dictates. It was adopted in January 2014

### The Transition

The Morsi government abjectly failed to address the economic needs of the country. For all practical purposes, his government consisted of marginally competent cabinet officers. But more importantly, there was no economic policy. Not even the most elementary stop-gap measures to prevent the continued free-fall of the economy were put in place. Public safety continued to deteriorate as street gangs and thieves became more brazen, and the country's economic productivity spiralled downwards. Tourism, which has long been Egypt's second largest source of income, plummeted to an estimated 25-35 percent of its pre-revolution, pre-2011 levels. A substantial portion of the workforce joined the ranks of the unemployed, adding to the already 60 percent unemployment rate among those under 30 who represent 50 percent of Egypt's 84 million people. Egypt's foreign currency reserves, valued at \$39 billion in January 2011, declined to a mere \$11 billion by March 2013, of which \$5 billion are believed to have been in gold bullion and \$6 billion in treasury authorizations

which cannot be used at the international level. Egypt's economic credit has all but disappeared, and all financial transactions, including government ones, have to be made on a cash basis. The loan for approximately \$4.5 billion Egypt had started to negotiate with the IMF in early 2011 was never finalized because the Morsi Administration could not agree to removing government subsidies from electricity, gas, and food staples. The new government under the temporary President agreed to renew the talks after the Presidential elections in May 2014.

Saudi Arabia and Qatar deposited substantial amounts with Egypt's Central Bank, but these were in the nature of foreign deposits, which may have helped to give some comfort to investors but were not intended for economic development projects. In fact, the government had no economic development plan. Nevertheless, the government did use some of these funds, thus exposing the treasury to a substantial debt in addition to any other debts that the treasury may discover as a result of the collapse of previous investment projects, particularly in the tourism sector. The Egyptian Treasury will still be indebted to Saudi Arabia and Qatar for sums estimated at \$8 billion dollars. These two countries could forgive this debt, extend the loan in time, or use it as credit to acquire failed and failing economic projects from the public and private sectors. But any such acquisitions would be made at bargain prices, thus further undermining the Egyptian economy. In 2014, Field-Marshal el-Sisi negotiated with the UAE a loan in the amount of \$4.9 billion for housing construction.

The substantial revenue loss due to the decrease in tourism and other economic factors resulted in a substantial loss in the value

of the Egyptian pound, which went from 6 EGP per dollar to 8 EGP in the relatively short period of six months in 2013. This reflected the factors mentioned above and a high inflation rate, which during the Morsi period of one year was approximately 18 percent across the board and higher in certain sectors, particularly the food sector which affects all Egyptians. This particularly impacted the 20 million Egyptians who before the Morsi government took office lived on an average of \$2 per day, or the equivalent of 10-12 EGP. With the purchasing power of the pound dropping so significantly, these 20 million people who were on the brink of poverty have been hurled over the edge.

All of these economic factors had a significant political impact, resulting in a loss of confidence in the Morsi government and in the MB. This was coupled with the obvious ineptness, not to say incompetence, of many cabinet officers and government appointees, as well as a dysfunctional office of the president itself. Issue after issue developed into crisis after crisis, with the government unable to address any of them and the presidency unable to respond. After a year of what could politely be described as a government in disarray, it was obvious to the Egyptian people that Morsi was not a competent president. In fact it was clear that he was a figurehead, and that most decisions were made by the MB's Office of Guidance. Regrettably whoever was calling the shots at the Office of Guidance, including the Guide himself, proved ill-prepared to administer a country.

As the economy went from bad to worse, one of the consequences was a significant acceleration in migration from rural to urban areas. Cairo saw an increase of more than two million people in two years. The new-comers

reside in shanty-towns built outside of existing shanty-towns. As the numbers increased, so did the demand for electricity and water, which the city cannot supply. By the time the June 30, 2013, protests began, the city of Cairo lacked electricity for an average of three hours per day, and several neighborhoods lacked water for up to four hours per day. Other cities also suffered similar shortages. There were shortages of gasoline and bread, both of which are critical in the daily life of Egyptians. Public transportation broke down and rail transportation, which is essential particularly to link Upper Egypt to Cairo, became less and less reliable. Protestors and mobs stopped trains and barricaded roads, while small gangs simply hijacked cars and trucks on highways, even

in Cairo. The government was unable to respond to any of these crises.

In the end, the Egyptian people lost patience with this situation and saw the prospect of an Islamist form of government auguring more of what they were already struggling to endure. The June 30 popular action was therefore not only driven by political beliefs, but also by practical exigencies.

### A Delicate Situation for the U.S.

The Obama Administration reacted to these recent events with ambiguity, as it had since January 2011, and for that matter, to the entire region throughout the “Arab Spring.” Its position, as reflected in public statements by President Obama and spokespersons for the



Essam Sharaf

During the “Arab Spring” a man carries a card illustrating the vital role played by social networks in initiating the uprising.

administration, has frequently come across as unfocused and unclear, sending inconsistent messages. On July 2, the U.S. warned the Egyptian Armed Forces against a coup, threatening to suspend military aid while at the same time encouraging President Morsi to hold early elections (whether for the presidency or the People's Assembly is unclear). But soon thereafter the administration changed its position.

Mixed messages aside, it is clear that the United States must continue to assist Egypt if it wishes to maintain its influence. The administration must not threaten to cut off military aid or any other form of economic assistance. The last thing the U.S. needs is to offend the Egyptian people and the military at this critical juncture. It is essential for the U.S. to maintain its contacts with the Egyptian military in order to retain its leverage and to influence both political and strategic outcomes.

A security vacuum in the Sinai has already allowed Islamist militants to establish themselves in the north of the peninsula. From this position they have launched attacks on Egyptian troops and police as well as on Israeli forces, forcing the current regime to embark on the country's largest military campaign since the 1967 war. The strategic importance of the Sinai and its proximity to the Suez Canal make control of the area critical to U.S. interests. Maintaining ties and providing aid and behind-the-scenes assistance may be the best way to ensure that Egypt regains and retains control over this crucial area.

If the Egyptian military becomes fed-up with U.S. threats to cut off military assistance, Egypt could turn to Russia in the same way it did in 1956. Well aware of this historic

precedent, Russian President Vladimir Putin already made a declaration in Moscow to the effect that Russia would be willing to provide Egypt with military assistance to prevent the situation from devolving into what he called a "civil war." In January 2014, Field-Marshal el-Sisi went to Moscow and penned an agreement to receive military aid from Russia. If Egypt shifted its military supply sourcing to Russia and the U.S. was cut out, American influence in much of the region would vanish. The Arab world would be divided once again, as it was after 1956, between the monarchies and the republics. A new revolutionary flame would be lit, and the U.S. would become the common enemy for most Arab states.

Leaving aside the geopolitical consequences of such a situation, its most direct effect would be to unify the revolutionary fervor existing in the countries that have gone through the "Arab Spring." That in turn may reinforce the position of Islamist movements. It would also destabilize the monarchies and could ignite sectarian war in some of the Gulf States, with the incitement of Iran. This would also constitute a threat to the security of Israel, which would force the U.S. to take a more direct role in providing security for that country. And more direct U.S. involvement in providing military support and protection to Israel would in turn cause an escalation in Arab antagonism towards the U.S.

All of this leads to the conclusion that the U.S. should be very discrete in its pronouncements, develop an integrated regional policy for the Arab world, and avoid being pushed into decisions about the region by domestic politics. The administration must fully realize that the lights along the banks of the Potomac do not illuminate the banks of the Nile, or for

that matter the Tigris and Euphrates, the Litani, or the Yarmouk.

Last but not least, it is important to note that the saga of the Palestinian people is neither dead nor forgotten in the Arab world. What happens in Egypt's Sinai will be affected by what happens in Gaza, and what happens in Gaza will be affected by what Egypt does in Sinai. Similarly, what happens in the West Bank will be affected by what Israel does there, and what happens in Jordan will be affected by what happens in the West Bank. The Arab world is much more interconnected than most people in Washington believe it to be.

This is challenging for the U.S. administration, which should take bold steps in the economic arena to assist Egypt—as well as Syria and Tunisia. It should also create initiatives in Libya, which does not need economic assistance but could benefit from technical assistance on many levels. The U.S. could be the champion of new constitutions and the rule of law, advocating the values and principles we most venerate. But the administration has to live up to these values and principles; the President cannot only make speeches about them. Guantánamo and the wars in Afghanistan and Iraq will continue to haunt the U.S., as does its unconditional support of Israel at the cost of even minimal justice for the Palestinian people. Our own double standards will always be a bar to our credibility with the Arab peoples. But this too can change, if the political will exists.

### **Looking Ahead**

Every revolution raises questions of legitimacy and legality. Some revolutions have legitimate claims, grievances, and goals, but they seldom address or achieve them through lawful processes. Had such a process existed, the

legitimacy of these claims would have been addressed without demonstrations or violence. Revolutions are the last resort.

The Egyptian people have demonstrated that they want popular democracy and the rule of law in their country. They should be supported. Notwithstanding the above, excessive use of force by the military and security forces cannot be justified. As many have asserted, there must be an independent and impartial commission of inquiry to look into recent events, not only in Cairo but in other parts of Egypt. There are too many conflicting and contradictory facts that need to be addressed in order to avoid more violence and a greater schism within a society already sharply divided.

A political solution must be found, even though the European Union, the U.S., and many other countries have called upon the Egyptian military to do whatever possible to prevent violent incidents. But without follow-up, it became clear that these were empty exhortations. Egypt has become deeply divided, and the polarization that has developed between the MB and the rest of Egyptian society is not likely to abate by itself. The divisions have spread beyond large urban centers into the countryside, where they have turned families and neighbors against one another. No internal political mechanism is likely to work under the present circumstances. This is a dangerous sign for a society that needs to be united in order to face and overcome a multitude of contemporary challenges. If this polarization continues, social divisions will deepen and political stability will be threatened, thereby counteracting attempts at decisive leadership and preventing any party from obtaining the broad-based support needed to address these issues. In particular, it is clear

that the country's economic crisis will worsen in the coming months, an issue that cannot be addressed or resolved in the midst of political and social tumult.

Throughout Egypt's history, the one thing that has always held it together is the sense of "Egyptian-ness." This includes the Muslim and the Copt, the rural and the urban, the rich and the poor. Egypt has progressed when its people have been united and regressed when its people have been divided. Field-Marshal el-Sisi's candidacy for the Presidency seems to have united a majority of the people behind him. There is high optimism in the county. But repression of the MB and the pro-democracy movement is ongoing. Police abuses, particularly in the prison system, constitute numerous violation of international human rights

In the meantime, Egyptians must avoid sectarianism. The MB must cease claiming that there is a religious war between the righteous and the *kuffar*, meaning anybody who disagrees with them or advocates secularism. The Salafists must realize that they, like the MB and other Islamists, are part of an Egypt that can claim adherence to Islamic values but must also establish a non-sectarian form of government that guarantees the rights of all citizens, Muslim and non-Muslim alike, irrespective of their faith, color, gender, and any other distinction.

An international or national fact-finding commission should be established to ascertain and assess the events that led to the establishment of the Third Republic in early July up through August 2013. But neither the United States nor the EU is pressing that point, and without it, the military regime will not do it for fear of embarrassment. The military is extremely sensitive to any criticism and will not even allow any inquiry in any of its

actions, and the security forces simply do not want the blame to fall on them, even though their tactical operations have demonstrated excessive use of force. Clearly, there can be no progress towards reconciliation without establishing the facts – the truth is always part of justice. If there is to be any reconciliation, any national harmonization and coming together, it is crucial that an accurate record be established of the participants to any particular act, what occurred and why—particularly those that resulted in multiple deaths and injuries. An impartial and fair commission must determine where responsibility lies, particularly with respect to international criminal responsibility for what could be considered crimes against humanity, torture, or violations of

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internationally protected human rights. As it is now, conflicting accounts may be due to the polarization mentioned above, as each political protagonist group offers a different narrative based on sometimes radically different interpretations of the same facts, and sometimes based on different facts altogether.<sup>13</sup> But these are essential truths that are foundational for any process of national reconciliation.

The discordant and fractured nature of Egypt today, and the factors stated above, will have significant consequences for Egypt's continued stability and sustainability. The Third Republic is here to stay, in one form or another, and the military will have a strong

role in it for the foreseeable future. The military may formally retreat from its current highly visible public role, but will maintain control over society by pulling the strings from behind the curtain, thereby maintaining its own “state within a state.” This includes an already significant part of the national economy, namely military industries and other interests in different economic sectors. Alternatively, the military may take over the executive branch and rule the country directly, as Gamal Abdel Nasser did in 1954.

The continuing exponential increase in

*The declining economic situation that is evident today will have a continuing impact on the country’s overall human development, which has already been at risk for at least the past decade and more so since the revolution began in 2011.*

population and the fall in agricultural output and industrial productivity will have dire consequences that will take decades to reverse. The deepening effects of the economic crisis are experienced by most Egyptians, which explains why they continue to support the military and security forces, notwithstanding the casualties among the MB, who have in turn reactivated their “secret organization” and returned to violent tactics. In fact, this violence has helped the current military-backed government to justify its crackdown on supporters of the MB and a reinstatement of the “state of emergency” laws that were employed for decades by Mubarak and only recently declared unconstitutional by Egypt’s highest court. The effect of these confrontations and their fall-out has left average Egyptians feeling drained, with an

overwhelming desire for stability, sustainability, and economic growth.

As history teaches, instability and economic decline often lead to military dictatorship. Thus in a perverse sense the MB’s efforts are not only unlikely to lead the country towards democracy, but may instead produce its polar opposite. The declining economic situation that is evident today will have a continuing impact on the country’s overall human development, which has already been at risk for at least the past decade and more so since the revolution began in 2011.<sup>14</sup> No matter what the future government of Egypt looks like, its priority will necessarily entail stabilizing the country’s government, economy, political parties, civil society, and general public. Competency will—and indeed must—be a prime prerequisite for those appointed to cabinet and sub-cabinet positions. These new leaders must also possess integrity and clearly stand above the fray and the furore of contemporary Egyptian politics.

### Requiem for the Arab Spring

A new alliance has been forged between Egypt’s Third Republic, the U.S., and the Saudiled Gulf Cooperation Council (GCC). From the perspective of regional policy, this will produce results substantially similar to those that existed under the Mubarak regime. Egypt’s Third Republic is unlikely to do anything that will upset its relations with Israel or endanger the peaceful relationship between the two, which is indispensable to Egypt maintaining good relations with the United States. Egypt will work much more closely with Saudi Arabia and through it with the United Arab Emirates and other GCC countries, particularly in the areas of economic cooperation and political support. Qatar, which was the

principal funder of the MB, has a new Emir who will toe the Saudi line. It is already reported that Qatar has cut funding for the MB.

For all practical purposes, this is the end of the “Arab Spring,”<sup>15</sup> but not of confrontations and violence in different parts of the Arab world. In Syria, the casualty count now far exceeds 150,000 killed, an inestimable number of persons injured, and an estimated nine million refugees and internally displaced persons. It appears more likely that the situation in Syria will play itself out over death and destruction only to ultimately result in a settlement imposed by external forces. But when will that come, and after how many casualties, and how much destruction of the country is unknown. Yemen continues to suffer from ongoing internal strife, but little attention is paid to it by the world. Iraq continues in its own incessant ethnic violence with almost daily incidents. Since the Maliki regime has taken over with the support of Iran, an estimated 10,000 people have been killed and as many as 100,000 people injured. Libya continues to be a chaotic scene where militias control the country and operate as gangs. They have virtually stopped oil production and export, kidnapped the Prime Minister from his residence, seized public places at will – all of that because the United States and NATO never planned for the post-Qaddafi period. Where else violence will erupt in the Arab world is unpredictable, but many hotspots exist, such as in Jordan, Morocco, and even Algeria. The Arab world remains in a constant state of upheaval.<sup>16</sup> By way of analogy, it is like a seismic area with multiple volcanoes erupting at different times and sometimes simultaneously. All of that to say, in the most diplomatic of terms, that the situation in the Arab world,

including Egypt, is fluid, unpredictable, and potentially explosive.

### No End in Sight to Ambiguity

The Obama administration finds itself in a dilemma. Many accuse the United States of being disingenuous, playing both sides against the middle and one side against the other. Ambiguity is the worst possible policy in the Arab world, and particularly in Egypt at this time. The type of constructive ambiguity that once was the hallmark of the Nixon administration, as carried out by Henry Kissinger,<sup>17</sup> is no longer workable in the Arab world. Technology has made information access and communication much easier and faster, and has left little to the secretive recesses of diplomacy. So much is known by so many and so fast that Machiavellian diplomacy is very difficult to carry out.

*All of that to say, in the most diplomatic of terms, that the situation in the Arab world, including Egypt, is fluid, unpredictable, and potentially explosive.*

The Obama administration has to decide how it can support the Egyptian military, at the risk of alienating those who advocate democracy and human rights in the international community, and also achieve freedom and democracy. Ambiguity looks like dithering, indecisiveness, and lack of resolve. At this point, the United States is already losing support among Egyptians, even though it is alleged that Secretary Hagel and General Dempsey have consistently reassured their counterparts in the Egyptian military that U.S.

support and cooperation will continue, though subject to disruptions such as the postponement of the delivery of F-16 aircraft and other military equipment and parts. But subject to diplomatically conveyed conditions, on October 9, 2013, the U.S. stated it would be cut a part of the \$1.3 billion military aid it sends to Egypt annually until the Egyptian government takes the necessary steps to restore democracy, in light of the continued crackdown on Islamists.<sup>18</sup> More particularly, it would suspend the delivery of large-scale military systems and withhold cash support. In response to this, the Egyptian government has said this move was wrong and that Egypt “would not surrender to American pressure.”<sup>19</sup> U.S. Secretary of State John Kerry, however, has made clear that this cut in aid is not a withdrawal from relations with Egypt, and has not made clear what the necessary steps are to restore democracy.

*Egypt is in the throes of a military dictatorship, which for some is benign, and certainly for the MB, is not so at all. The U.S. seems satisfied, though uncomfortable, with the situation.*

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The United States should reassure the Egyptian people that it will continue providing assistance. This means that USAID staff that who been evacuated from Cairo should return and resume their activities. This is particularly true with respect to providing technical assistance to the Ministry of Justice for the training of judges, as well as to the Ministry of the Interior for the training of police officers responsible for riot control, and for the prosecutors who ensure that guidelines on the use of force are adequately observed and that the

rights of the accused are safeguarded. More importantly, the U.S. must insist on the reform of prisons and fund such an initiative. Prison conditions are appalling by international standards, as recently revealed in a New York Times article,<sup>20</sup> and numerous other sources including pictures and videos smuggled out of prison. Probably the most egregious example was the asphyxiation of 37 handcuffed prisoners who were in a locked truck parked outside Tora Prison when tear gas was thrown inside the truck. The responsible officer received a 10-year sentence. Torture and mistreatment continues inside prisons and the sick and injured are not being treated and their deaths are not reported as a consequence of the lack of treatment or mistreatment. These are not the hallmarks of a society living according to the rule of law. All of the programs proposed above are fairly low-cost. In fact, cumulatively they would not even amount to the price of one F-16, but they would have a significant impact in Egypt and thus would be a credit to the U.S.<sup>21</sup>

### **Conclusion**

Throughout this article, the reader will no doubt see that there are interspersed conclusions within different sections. But, at the risk of sounding like a self-appointed pundit, I can conclude that Egypt is in the throes of a military dictatorship, which for some is benign, and certainly for the MB, is not so at all. The U.S. seems satisfied, though uncomfortable, with the situation. It is after all no different than the way things were under Mubarak and Sadat, though for the time being with much more repression and violence concentrated in a relatively short period of time. The MB are not likely to give up, and they will continue either with peaceful demonstrations, violent

ones, attacks on Christians in Upper Egypt, or with acts of sabotage. The Regime is likely to respond with the same level of harshness. The media is likely to be more constrained and less free than in the Second Republic, under the MB. Even now the media is under greater restrictions than it had been in the past two decades of the Mubarak regime. In a confidentially leaked video of senior Egyptian army officers published in the New York Times, it was clear and unequivocal that the military are concerned about the media and have embarked on establishing a policy of “red lines.” Media repression has been significant. Of note are three Al Jazeera correspondents who were arrested on trumped-up charges that they were conspiring with the MB even though totally unsupported by the facts as revealed by the judge in that case. But it is the economy that will sink Egypt as it is sinking itself. No amount of financial loans or deposits by Saudi Arabia or the Gulf States will be a cure for a rapidly declining economy in the face of an exponentially growing population, which even now relies for 50 percent of its food supplies on foreign imports. No one in Egypt speaks of the existing economic crisis, and there are no plans to address it other than band-aid solutions designed to limit inflationary growth. The security situation in the Sinai is an ongoing threat that is likely to increase particularly as Hamas in Gaza will support it. Will the military option be to attack Gaza? Israel would surely find such an option in its interest, as it would draw Egypt into a new quagmire as it tries to deal with almost 1.5 million inhabitants of Gaza. This will also be a test for the military that so far has had so much difficulty in the Sinai.

Egyptian society is deeply polarized with most of the population favouring the current

military leadership and yearning for political stability and economic development. But this is also an opportunity for the security forces to and some elements of the military to eliminate the MB once and for all, which explains the ongoing repression against them, and the absence of any positive steps toward reconciliation. This is not a good course of conduct, as the estimated three million MB activists and their supporters cannot simply be eliminated. Wisdom would require reconciliation, but wisdom is not prevailing in Egypt at the moment.

Notwithstanding the above as well as the lack of democracy, the United States and the EU will normalize relations with Egypt and look the other way whenever it will suit them.

The future for Egypt and for Egyptians does not look good objectively, but then for some particular reason, some say supernatural, Egypt and Egyptians have always survived. As the late President Sadat once told me during an overnight visit at his hometown house at Mit Abu el-Kom, “don’t worry about Egypt, it has lived for 7,000 years and it will live for a long time to come.” **PRISM**

## NOTES

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<sup>1</sup> The First Republic was declared on 18 June 1953 and ended with the resignation of Mubarak on 18 February 2011. The Second Republic lasted from 30 June 2012 until 4 July 2013. Detailed descriptions of the events described in this article can be found in M. Cherif Basisouni’s Egypt Updates, released periodically as of January 2011 and numbered consecutively from 1 - 29. They can be found at <http://mcherifbassiouni.com>

<sup>2</sup> Bear in mind the distinction between legality and legitimacy, the former being a formal, legal and political process, and the latter reflecting the higher

values and principles usually reflected in a constitution.

<sup>3</sup> M. Cherif Bassiouni and Daniel Rothenberg, *The Chicago Principles on Post-Conflict Justice* (DePaul University International Human Rights Law Institute, 2008); See also M. Cherif Bassiouni, *Post-Conflict Justice* (Transnational Publishers 2002); The Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, 18 January 2000, UN Doc. E/CN.4/2000/62.

<sup>4</sup> "EU to suspend export licenses for weapons used by Egypt," *Egypt Independent*, August 21, 2013. <http://www.egyptindependent.com/news/eu-suspend-export-licenses-weapons-used-egypt>.

<sup>5</sup> Human Rights Watch, "Egypt: Mass Attacks on Churches," August 22, 2013, <http://www.hrw.org/news/2013/08/21/egypt-mass-attacks-churches>.

<sup>6</sup> Patrick Kingsley, "Egyptian authorities re-capture Islamist-held town," *The Guardian*, September 16, 2013, [http://www.theguardian.com/world/2013/sep/16/egyptian-police-recapture-islamist-town-delga?CMP=tw\\_t\\_gu](http://www.theguardian.com/world/2013/sep/16/egyptian-police-recapture-islamist-town-delga?CMP=tw_t_gu).

<sup>7</sup> David D. Kirkpatrick, "In Islamist Bastions of Egypt, the Army Treads Carefully, And Christians Do, Too," *The New York Times*, September 17, 2013, [http://www.nytimes.com/2013/09/17/world/middleeast/in-islamist-bastions-of-egypt-the-army-treads-carefully-and-christians-do-too.html?hp&\\_r=0&gwh=64CD25F025948A4FE25872D91E2D0CB1](http://www.nytimes.com/2013/09/17/world/middleeast/in-islamist-bastions-of-egypt-the-army-treads-carefully-and-christians-do-too.html?hp&_r=0&gwh=64CD25F025948A4FE25872D91E2D0CB1).

<sup>8</sup> Human Rights Watch, "Egypt: Mass Attacks on Churches,"

<sup>9</sup> Amnesty International, "Egypt: Government must protect Christians from sectarian violence," August 20, 2013, <http://www.amnesty.org/en/news/egypt-government-must-protect-christians-sectarian-violence-2013-08-20>.

<sup>10</sup> David D. Kirkpatrick, "In Islamist Bastions of Egypt, the Army Treads Carefully, and Christians Do, Too,"

<sup>11</sup> David D. Kirkpatrick, "In Islamist Bastions of Egypt, the Army Treads Carefully, and Christians Do, Too,"

<sup>12</sup> Human Rights Watch, "Egypt: Mass Attacks on Churches,"

<sup>13</sup> As Bahrain did with the Bahrain Independent Commission of Inquiry (BICI) in 2011. See Report of the Bahrain Independent Commission of Inquiry (2011), available at: <http://www.bici.org.bh/BICIREportEN.pdf>. The BICI's official website is available at: <http://www.bici.org.bh>.

<sup>14</sup> See Arab Human Development Report 2009: Challenges to Human Security in the Arab Countries, United Nations Development Programme (2009) available at <http://www.arab-hdr.org/publications/other/ahdr2009e.pdf>; Human Development Report, United Nations Development Programme (2013) available at <http://www.undp.org/content/dam/undp/library/corporate/HDR/2013GlobalHDR/English/HDR2013%20Report%20English.pdf>.

<sup>15</sup> M. Cherif Bassiouni, "The "Arab Revolution" and Transitions in the Wake of the "Arab Spring", *UCLA Journal of International Law & Foreign Affairs* 17, no. 133 (2012).

<sup>16</sup> Eugene Fisher and M. Cherif Bassiouni, *Storm Over the Arab World: A people in revolution* (Chicago: Follett Publishing Company, 1972).

<sup>17</sup> Henry, Kissinger. *Years of Upheaval* (New York: Little & Brown Co, 1982).

<sup>18</sup> Nicole Gaouette and Caroline Alexander, "U.S. Cuts Military Aid to Egypt, Seeks Move to Democracy" *Bloomberg*, October 9, 2013, <http://www.bloomberg.com/news/2013-10-09/u-s-suspends-cash-and-equipment-assistance-to-egyptian-military.html>.

<sup>19</sup> "Egypt condemns US decision to suspend military aid" BBC News, October 10, 2013, <http://www.bbc.co.uk/news/world-middle-east-24471148>.

<sup>20</sup> David D. Kirkpatrick, "Westerners' Smuggled Letters Offer Glimpse of Egyptian Prisons" *The New York Times*, October 1, 2013, available at: <http://www.nytimes.com/2013/10/01/world/middleeast/westerners-smuggled-letters-offer-rare-glimpse-of-egyptian-prisons.html?pagewanted=all>.

<sup>21</sup> For example, USAID assistance to the MoJ is only \$7.5 million.

<sup>22</sup> David D. Kirkpatrick, "In Leaked Video, Egyptian Army Officers Debate How to Sway News Media" *The New York Times*, October 4, 2013, available at: [http://www.nytimes.com/2013/10/04/world/middleeast/in-leaked-video-egyptian-army-officers-debate-how-to-sway-news-media.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/10/04/world/middleeast/in-leaked-video-egyptian-army-officers-debate-how-to-sway-news-media.html?pagewanted=all&_r=0).

## Photos

Page 6 photo by Elyassed, Mohammed. 2013. *Picture showing pro-Morsi protesters in Damietta on July 5, 2013*. From [http://commons.wikimedia.org/wiki/File:Damietta\\_protests.jpg](http://commons.wikimedia.org/wiki/File:Damietta_protests.jpg) licensed under the Creative Commons Attribution-ShareAlike 3.0 Unported license. <http://creativecommons.org/licenses/by-sa/3.0/legalcode>. Photo reproduced unaltered.